IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 15 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SURESHJI BALDOJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 15 of 2001

MR MJ BUDDHBHATTI for Petitioner No. 1-2

MR JM BUDDHBHATTI for Petitioner No. 1-2

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 07/08/2001

ORAL JUDGEMENT

This appeal is filed by the present appellants accused against the judgement and order of conviction and sentence passed by the learned Additional Sessions Judge,

Court No. 19, Ahmedabad in Atrocity Case No. 8/2000. The appellants accused are convicted for the offence under Section 326 IPC and both of them were sentenced to suffer 3 years RI and to pay fine of Rs. 2000/-, and in default to further undergo 6 months RI. Both the accused are also convicted for the offence under Section 324 read with Section 34 IPC and sentenced to suffer one year RI and to pay fine of Rs. 1,000/-, in default to further undergo 3 months RI. Both of them were also held guilty for offence under Section 135(1) Bombay Police Act, but no separate sentence was awarded. Both the aforesaid sentences were ordered to run concurrently. Both the accused have remained in jail as under-trial prisoner from 25.10.1999 to 26.11.1999, as stated at the bar by learned Counsel Shri Buddhbhatti for the appellants-accused. The said period is given as set-off by the learned trial Judge.

The aforesaid order of conviction is not challenged by the learned Counsel Shri Buddhbhatti, for the appellants accused. However, he submitted that the order of substantive sentence of 3 years RI imposed against both the appellants accused be reduced as sentence already undergone and instead of that order of fine of Rs. 2,000/- plus Rs. 1,000/- in all Rs. 3,000/be enhanced to Rs.10,000/-. However, learned APP Shri Mankad for the respondent State vehemently submitted that it should not be less than Rs. 20,000/- for each of the accused in case this Court is inclined to reduce substantive sentence as sentence already undergone.

Later on, both the learned Counsel Shri Buddhbhatti and Shri. Mankad, APP for the respective parties left it to the Court for passing suitable order of fine.

When the learned Counsel for the appellants accused has not challenged the order of conviction, then I am not required to go into the legality and validity of the order of conviction passed by the learned trial Judge. The appeal against the order of conviction therefore fails and it is dismissed.

However, considering the peculiar facts and circumstances of the case including the young age of the accused at the time of commission of the offence, the nature of the offence, their family background and other circumstances of the case, I am of the considered opinion that interest of justice would be served by enhancing the fine of Rs. 3,000 to Rs. 15,000 against each of the appellant-accused. In default of payment of fine and

deposit thereof within 6 weeks from today, they will have to undergo 3 years RI.

Accordingly this appeal is partly allowed on the point of sentence and the order of substantive sentence of 3 years RI imposed for the offence under Section 326 and one year RI for the offence under Section 324, read with Section 34 IPC is hereby reduced as sentence already undergone. However, fine of Rs. 2,000 imposed by the trial Court for the offence under Section 326 IPC and fine of Rs. 1,000/- for the offence under Section 324 IPC is enhanced to Rs. 15,000/- in all, for both the offences. Both the appellants accused are ordered to deposit Rs. 15,000 each before the trial Court within six weeks from today, failing which they will have to undergo 3 years RI. At this stage, it is stated at the bar by learned Counsel for the appellants accused that they have already deposited Rs. 3,000 each before the trial Court. In that case, they shall now deposit remaining amount of Rs. 12,000/- each before the trial Court. On depositing the said amount, the learned trial Judge shall pay Rs. 15,000/- to injured Sanjaykumar Manilal Jadev and Rs. 15,000/- to Hasmukh Manilal Jadev, by account payee cheques drawn in their respective names. Bail bonds of the accused stand cancelled.

(B.J.Shethna, J.)

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